

0012

ANNUAL REPORT

COPYRIGHT OFFICE, EXAMINING DIVISION

FISCAL YEAR 1998

SUBMITTED BY:

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November 4, 1998

The Examining Division continued to deal with a shortage of staff and a mounting backlog of claims. Several activities dominated staff and management time during the year. Training new staff was a primary activity with the goal of having the new examiners making an increasing contribution toward reducing the backlog. Management decided to develop a management plan for bargaining a return of specific quantity requirements for examiners after two years in a pilot program with no quantity requirements. The division continued to plan for the Copyright Office Electronic Registration, Recordation and Deposit System (CORDS), with specific focus on electronic journals and Mixed Cords registration. Automation activities pressed toward more efficient ways to accomplish the work. Those involved in writing and reviewing appeals worked toward and achieved an improved timeframe for handling appeals. In addition to all efforts to reduce the backlog, the division dealt with several substantive issues over the year, particularly with registration for online works.

At the end of the fiscal year, two additional examiners had been hired in the Performing Arts Section, but one of the examiners hired in FY 97 resigned and two experienced examiners in Literary Section resigned and another transferred to a Library of Congress position. This brought the total number of examiners to 53, still short of the staffing level in 1993 just before a hiring freeze and early retirements. Several staff members retired or were transferred. Therefore, at the close of the year vacancy announcements were posted for three examiner positions in the Literary

Section, one examiner in Performing Arts Section, a senior examiner and supervisory examiner in the Visual Arts Section, a supervisory examiner in the Renewals Section and a Correspondence Clerk.

Management and the Special Assistant to the Chief worked with the Administrative Office to draft an MDEP (Management Decision Package) for restructuring the Office that would include hiring 8 new examiners in FY 2000, bringing the examiner staffing back to the 1993 level.

EFFORTS TO REDUCE THE BACKLOG

The backlog of claims grew from 82,964 at the end of FY97 to 124,749 at the end of FY98. Because of the long training period (12-15 months) the new examiners hired are not fully productive and the division is still understaffed in examiners. The division has, however, addressed the backlog in various ways. Staff worked overtime from January through September. This included authorizing compensatory time and work during the week and on Saturdays and Sundays. Overtime work amounted to approximately 10,000 to 12,000 additional claims processed each month. This represents an additional week's worth of claims processed each month.

Supervisors continued to use facilitative management principles, asking staff for suggestions concerning the handling of claims with respect to both substantive and procedural aspects. Changes in practices and procedures were relaxed where possible

without destroying the value of the registration and the certificate.

The division authorized the use of email in lieu of written correspondence. The Automation Group organized a test project with a group of 15 volunteers, completed the testing, and evaluated the results. Based on their experience, the group modified the procedures and implemented email correspondence for division-wide use. Complete procedures were published in ED-22B, EMAIL Correspondence Guidelines.

Staff from Cataloging and Information and Reference Divisions continued to be detailed to the division to assist in examining claims. In the Performing Arts Section, Motion Picture Team examiners spent part of the regular work time examining PA/SR claims and technicians from that team screened PA flat material exclusively on overtime work.

ED-20C, Short Forms, was issued to standardize division procedures for handling short forms. The division is taking a liberal approach in accepting short forms in order to prevent additional correspondence and to ease the burden of registration on the applicant. ED-20D, Adverse Claims, was issued with a request for comments and the revision is awaiting final review.

Project Remitter, begun several years ago in the Performing Arts Section, is now in use in both Literary and Visual Arts Sections. This project provides for one

examiner handling all the correspondence for a given organization and it reduces correspondence and enables the examiner to work with the applicant to improve their filing methods.

Through discussions with staff and by issuing division-wide practices, the division has continued to strive for consistency in handling claims. The Visual Arts Section has made a concentrated effort to review and revise, where necessary, their application of the appropriate standard for judging copyrightability of works in the visual arts. The Performing Arts Section reconsidered and updated examples of borderline works to be used as guidelines in determining de minimis authorship in musical works to achieve greater uniformity in carrying out the section's policy regarding the copyrightability of musical works. In addition, the PA Section began to apply the principle outlined in ED-7A, The Unitary Work Concept, to their subject matter. In a consultative process, the Literary Section worked to improve their consistency in handling claims with borderline de minimis text, claims with text and artwork covered by the unitary work principle and compilations.

In the Visual Arts Section, GS-11 examiners voluntarily reviewed four trainees' correspondence to assist the senior examiner who was training all four new examiners. The reviewers received written guidelines and were able to make a substantial contribution toward currency in this category of work.

The division worked on streamlining its handling of first appeals and made good progress in reducing the pendency time of first appeals within the division. At the end of the year, 63 first appeals awaited action.

Division management continued to meet with representatives of AFSCME Local 2910 to discuss examiner distribution and evaluation concerns. By mid-year, management had decided to return to fixed quantity requirements for examiners and began to prepare a management plan in preparation for bargaining any adverse impact resulting from quantity requirements.

SECURITY

The Special Assistant to the Chief continued to work as liaison for the division with the Copyright Office Security Manager. Her activities included overseeing the collection of information for Risk Assessment of TX, VA, and PA and working with other Office representatives to establish risk levels and priorities. She also developed a comprehensive list of the staff in the division who need access to doors here and outside the division and advised other coordinators of possibilities of access for their staff to this division. She planned new access to the Renewals Section for members of the public once card readers are installed. Keys were ordered for the Motion Picture Team staff.

The Literary Section Head met with an ad hoc inter-divisional task group to write procedures for works where CD-ROMs or computer discs are combined with print material in a single deposit. This procedure, which will include reporting procedures for missing discs in this category, should be completed early in FY 1999.

CORDS

CORDS activities in the division were coordinated by the Special Assistant to the Chief. Several other staff members represented the division on the Implementation Group, Policy Committee, and various sub-committees. The Special Assistant drafted a proposal to register serial issues via CORDS when applicants agree to furnish through subscription one or two copies to the Library, if selected. She also drafted the first UMI agreement, which at the end of the year had still not been finalized by the Library and UMI.

UMI has submitted very large numbers of claims for academic dissertations on microfilm for many years. Early in 1998, we expected that these claims would be submitted electronically via CORDS. To prepare for this, in December 1997 three technicians began receiving training in how to process CORDS claims and information meetings were held with all technicians in the section and a Union representative.

The Eserials Group devised a plan to modify group serial registrations to include electronic journals. They developed a form, with instructions, to implement this plan.

The Mixed CORDS Group developed a scheme that permits electronic filing of the application, charging the fee to a deposit account, and sending physical deposit copies. The system will be designed to accommodate either separate examining and cataloging or the combination of those jobs on an experimental basis. Staffing and space were prime considerations as the year closed.

A proposal is under consideration to register TV series episodes via CORDS when videotapes are not required by the Library.

AUTOMATION ACTIVITIES

The Examining Division Automation Group was headed by the Special Assistant to the Chief through June, at which time the Automation Operations Coordinator was hired and assumed this duty.

Using the application forms on the Copyright Office web site as a starting point, a member of the division's Automation Group configured these files so that

staff can easily complete and print them from their PCs using Acrobat Reader (for example, to retype defective applications). Other network developments include the addition of the Renewals Section and the Motion Picture Team to the network correspondence system, an archives for appeal letters and, in the PA Section, an internal special log.

Using a spreadsheet program, the Automation Operations Coordinator created and implemented a system to record and report division end-of-week statistics for staffing, work received, production and work on hand. Not only are all calculations updated automatically, but the division end-of week report is automatically linked to the section reports, which are in turn linked to the team reports. This facilitates the efficient production of accurate, useful reports.

The Examining Automation Group continued to meet on a weekly basis to coordinate automation issues and activities throughout the division. In addition to handling nearly all of the PC trouble-shooting for the division, the group undertook special projects. In particular, to help implement the use of e-mail for official correspondence, they created written instructions, installed template messages and signature blocks on examiners' and technicians' PCs, and trained staff in the use of these templates.

New Pentium CPUs containing some updated software were installed for all Examining Division staff. Several staff members participated in planning and testing the new COINS system. The Special Assistant promoted the creation of the T: drive, a drive accessible to all C.O. employees who have network capability. The drive offers an easier means of transferring shared documents.

GATT REGISTRATIONS UNDER URAA

The Office received a total of 1507 individual and 94 group claims for registration under the URAA during the fiscal year. The bulk of the claims were motion picture claims. The Motion Picture Team examiner handled a total of 1747 claims, corresponding on about 722 of those. Receipts were heavy in December but have subsided to about 50-70 claims per month at the close of the fiscal year.

The main problems that prevented registration included the deposit of copies that contained good copyright notices and qualified for registration on Form PA, lack of nationality or nation of publication on the application, and questions about the identity of the author.

Overall receipts of claims in other classes have remained low, with receipts decreasing in literary and visual arts works and increasing in performing arts works.

WORKS TRANSMITTED ONLINE

The number of online works submitted for registration continued to grow. Websites, in particular, raised several issues for both the Office and the applicants, including how to characterize the work for registration. Some applicants have characterized their websites as periodicals and have sought to register using the group serial option. Many of the electronic journal submissions, however, were for single articles only and could not be categorized as collective works. The Office did not accept these works as serials, but required registration on Form TX as monographs. Some applicants registered their websites as multimedia works to include text, artwork, and audiovisual material. Others chose to categorize their works as databases and registered the site and a group of revisions or updates under the group database provision.

A major problem that emerged was how to register online works that are frequently updated. Until a group registration option is specifically designed for websites, the Office will apply a liberal interpretation of the existing group registration options to accommodate websites and other online works that are updated frequently. For example, if the applicant chooses to consider a website to be a database, the Office will permit group registration on this basis, given that the current meaning of the term "database" is very broad.

The Office prepared Circular 66, **Copyright Registration for Online Works**, based on the leaflet prepared and used by the division for the past year.

SECTION WORKFLOW IMPROVEMENTS

Literary Section

Japanese newspapers: The section set up a system for forwarding two major Japanese newspapers submitted on microfilm to the Asian Division of the Library. This was considered a great benefit to that division and permitted uniform handling of the copies in the section.

Performing Arts Section

Descriptive material in lieu of copy: Under a policy worked out in coordination with MBRS and the division, the Motion Picture Team will accept descriptive material in lieu of an actual copy for those episodes of daily shows that the Library does not want to accession. For the episodes the Library does want, typically the first and last months of a season, the applicant sends copies in a format requested by the Library.

Online Tracking: The section began online tracking for internal special handling claims. The log can be updated by any PA staff member to record receipt of specials and follow-up actions. The MC Section expeditors can consult the log only in the PA Section at present, but the plan is to enable them to access the record from their section.

Visual Arts Section

Mask Works: Registration fees increased as of July 1 from \$20 to \$75. The section notified their most frequent remitters and thus reduced significantly the number of short-fee cases to be handled after the fee increase. The MW practices were revised, updated and expanded this year and can now serve as a comprehensive training tool for future MW examiners.

Fabric Project: The section completed the first phase of a project designed to help reduce the number and size of fabric swatches received as deposits for registration of fabric designs. Staff contacted fifteen of the most frequent remitters and about one third of them have complied with the request.

Ergonomic improvements: Six examiner workstations were ergonomically upgraded by replacing desks with all new work surfaces, re-configuring the arrangement of furniture within each cubicle and, in some cases, adding auxiliary lighting.

Other Division-Wide Practices and Procedures

Intersectional Referrals: Section Heads, with input from Team Leaders and Senior Examiners, worked out more streamlined procedures for handling this workload. The main feature of the new procedure is a significant reduction in required consultations in favor of a more efficient forwarding of such claims at the senior-examiner level and some streamlined procedures at the examiner level.

Adverse Claims: The Special Assistant prepared a practice on adverse claims, distributed it for review and published it as ED-20D.

COMPENDIUM II: Section Heads, the Special Assistant and the Assistant Chief completed the draft of Chapter 800 COMPENDIUM II and forwarded it to the Chief for review.

SPEECHES AND OTHER OUTREACH TO THE COPYRIGHT COMMUNITY

John Martin spoke in October to a law class at DePaul University College of Law in Chicago about copyright basics and registration procedures. In July, Debby Weinstein addressed a group of Medical Illustrators in Toronto, Canada, on copyright registration for their works.

In May Jeff Cole gave a presentation in the office to a delegation from the National Copyright Administration of the People's Republic of China. The topic was registration of websites and other online works.

In response to lobbying on behalf of the American Society of Media Photographers, the Register met twice with representatives of that organization and the Examining Division to consider possible changes in deposit requirements to permit composite color transparency slides for unpublished collections. Although the Office was willing to receive such deposits, efforts to deal with the requirement of unifying author for unpublished collections were unsuccessful and that initiative seemed to break down. ASMP returned at the end of the year proposing instead a registration option for groups of published photographs. The Office is working on possible wording and procedures for such an option.

PA staff members arranged a visit to the section in October by three representatives from Warner/Chappell, Inc., a major music publishing company based in California. The purpose of their visit was to meet with the PA examiners assigned to work with Warner/Chappell under the Special Remitter program and discuss a large number of pending registrations. The representatives also gave a presentation to the PA staff, describing various aspects of the publishing business in general and their

day-to-day operation as well. Their visit benefitted both the organization and the Office by:

- 1) Fostering good relations between members of the music publishing industry and the Office;
- 2) Allowing staff to deal with a large number of cases face to face, which was efficient and educational for both sides; and
- 3) Providing an opportunity for the staff to gain first-hand knowledge about one of the industries with which they deal.

A representative of EMI Music Publishing visited the Renewals Section in early July and spent part of two days working with the staff on pending claims that needed various corrections. The staff helped him understand how to file claims that can be registered without correspondence, saving both time for the organization and the Office.

NOTEWORTHY APPEALS

ANDY'S GANG: Thirty-nine episodes of this television show, which aired in the 1950's and were syndicated as early as 1955, were originally submitted for registration in 1991. The Office rejected the claims because the copies did not bear a proper notice, and, under our policy at the time, a syndication of a motion picture

resulted in publication. An attorney for the applicant appealed our decision on the basis that syndication was limited and did not result in a divestitive publication. Several court cases were cited that supported this position. We again rejected the claims, reconfirming our position regarding syndication.

Several years later the Office modified its position on this issue. Although we would still initially reject a claim in this situation, we will register if presented with evidence that the syndication was limited. The present owner of the rejected episodes of ANDY'S GANG learned of the change in our position and began legal proceedings against the CO for refusing to register ANDY'S GANG. The Office reconsidered its earlier decision and concluded that the series was registrable as an unpublished work that had only a limited distribution.

HILTON CIGARETTE PACKAGE DESIGN: The decision in this second appeal became the catalyst for a thorough review and reconsideration of the copyrightability standards for graphic designs and for a series of meetings with the VA staff and the Register and General Counsel (plus the Chief and Assistant Chief).

The graphic design of the Hilton Cigarette package had been rejected initially and again on first appeal as de minimis according to our existing standards. The Board of Appeals overturned the earlier rejections and registered the claim. The meetings that followed enabled the staff to probe the analytical process of the Board

members, to recognize that the Feist standard as applied to this genre of VA works mandated registration for this particular graphic design, and to review and adjust our standards for examining lettering, logos, package designs, certain jewelry designs, and carpet designs.

GUCCI WATCH: Block letter "G" surrounding face of watch as main design element. This work was inadvertently registered despite its deminimis design. Only when later involved in litigation did this work come to our attention, raising the issue of whether to cancel the registration even though litigation had already commenced. We did cancel, and the applicant subsequently appealed our cancellation. We responded to their appeal letter and reiterated our intention to cancel the registration for lack of copyrightable separable authorship, and we subsequently did so.

INTEGRATED CMOS POLYSILICON COIL-BASED MICRO-PIRANI

GAUGE: This was an appeal filed for a mask work, a work rejected based on a determination that this was a deminimis work. The Board of Appeals overturned the rejection and this case became the catalyst for the Board to review our statutory authority for examining mask works for originality.

The Board recognized that the statute (including its legislative history) sets out a low minimum of creativity required for a mask work to be protectible and gives the Office authority to examine to exclude any mask work design that takes staple or

commonplace elements and combines them in an unoriginal manner. However, because this standard is a low one, and because our examiners lack the technical expertise to make such determinations, our practices should be worded to show that it will be quite rare that we would question the degree of originality. The VA section practices have since been modified accordingly.

OTHER INTERESTING CASES

STADIUM CHEERS: An attorney reported that his client had been notified that he had infringed the copyright in this work, registered in our office in 1988. Because of the minimal content of the work in question, the attorney questioned the basis for the registration. Upon reexamination of the deposit copy involved in the registration, we concluded that we had erred in making this registration. The work consisted of a very short, common musical motif repeated chromatically. Notwithstanding the pending litigation, we notified the copyright owner of record and his counsel of our intent to cancel this registration. The decision was based on the policy documented in the cancellation regulation, 37 C.F.R. Sect. 201.7

OZZIE AND HARRIET: This TV series beginning in the 1950's was one of the first of the family sitcoms. It ran for over a decade, totaling around 400 episodes, and enjoyed immense popularity with TV audiences throughout the country. Multiple episodes of the ADVENTURES OF OZZIE AND HARRIET were recently submitted

for registration as unpublished works. Bibliographic sources indicate that episodes from this show were syndicated in the 1960's and continued to be under new law.

We advised the attorney representing the present copyright owner that we would consider registering those episodes as unpublished that were syndicated only under the old law, providing his client could adequately demonstrate that such distribution was limited. Because syndication under new law clearly results in publication, however, any episodes syndicated after 1977 are considered to have been published and must meet the deposit and notice requirements.

"HEART OF THE OCEAN" necklace design (from Fox Pictures motion picture "Titanic"). Besides having timely topical interest, this work raised questions of copyrightability due to its simple design (a heart-shaped sapphire suspended from a diamond necklace) and of status as Fox asserted this was an unpublished work despite the film's previous release and our understanding that news reports had pointed out the availability of this work through one or more major jewelers. We determined that the work was copyrightable and that we would register it as unpublished per Fox's written confirmation of its status.

GONE WITH THE WIND: In 1967, MGM renewed the copyright claims in this work. Thirty years later (1997), the Selznick heirs (successors to Selznick International Pictures) wrote the Office asking if they could add their name(s) to the

1967 renewal registrations as additional claimant(s).

Earlier in 1997, the Central District of California in Selznick v. Turner Entertainment Co. had decided against the Selznick heirs in determining that a renewing co-owner (in this case MGM whose successor in interest is Turner Entertainment) takes legal title to the renewal copyright as a constructive trustee on behalf of the non-renewing co-owner(s) who are deemed to be beneficial owners. The court held that a constructive trustee has the power to market the work commercially and the responsibility to account to the beneficial owners after the fact. Hoping to gain full co-ownership to the renewal copyrights, the Selznick heirs made their request to the Office to change the claimant of record to include their name(s).

Ordinarily, once the 28th year ends with renewal having been made, we are not permitted later to make changes in the name of the renewal claimant of record, which in this case was a record that had stood a full 30 years unchanged. We refused their request on this basis.

APPENDIX

PERSONNEL

New Staff:

Examiners: Michele Broussard, Neil Gladd, Helen Livanios,
Christopher MacRae

Secretary to the Assistant Chief: Freda Duncan

Work Study Students: Lanea Hayes, Jonathan Hawkins, Sean Dallas-
Kidd, Thomas Odom, Anthony Williams

Transfers/Promotions within division:

Section Secretary: Lillian Fidler

Automation Operations Coordinator: Samantha Embrey

Transfers out of division:

Examiner: Taru Speigel

Technician: Tim Schurtter

Correspondence Clerk: Terrawn Rogers

Resignations:

Examiners: Arnette Holloway, Dan Stevens, Michael Szporer

Work Study Students: Secunda Robertson, Mario Alston, Sean Dallas
Kidd, Mario Martinez, Lanea Hayes

Retirements:**Section Head:** Frank Vitalos**Attorney Advisor:** David Levy**Supervisor Examiner:** Rita Maturi**Senior Examiner:** Gordon Richardson**Technician:** Peggy Sullivan**Hiring in Process at end of fiscal year 98:**

Examiners: 3 (Literary Section); 1(Performing Arts Section)

Senior Examiner 1 (Visual Arts Section)

Supervisory Examiner 2 (Renewals, Visual Arts Sections)

Correspondence Clerk 1 (Visual Arts Section)

Number of Staff at end of fiscal year 98:

Chief	1
Assistant Chief	1
Special Assistant to Chief	1
Automation Operations Coord.	1
Section Heads	3
Supervisors	8
Attorney Advisor	1
Senior Examiners	8
Examiners	53

Technicians	22
Secretaries	6
Correspondence Clerks	5
Clerical Assistant	1
Total	111

Attorney-Advisor: Upon David Levy's retirement, Ginny Giroux was assigned to the Visual Arts Section with the responsibility of handling the VA appeals as well as Congressionals for both VA and Literary Sections.

Section Head: In January, upon the retirement of Frank Vitalos, the Section Head in the Renewals Section, Nancy Lawrence was asked to serve as Acting Head of Renewals Section in addition to her regular duties as VA Section Head.

TRAINING

New examiner training

During this year, a major focus was the training of new examiners. Group training sessions were coordinated by senior examiners. A new staff member on the General Counsel's staff attended sessions with the new examiners. The attorney-

advisor briefed legal cases and led discussions with the group. In addition, intensive one-on-one training and review of the new examiners' work constituted a very heavy workload for the senior examiners. The team leaders assisted by temporarily taking on other senior examiner duties during this time.

Administrative Management Training: Thomas Bland, Rosalyn Jones

Americans with Disability Act: Nancy Lawrence

Copyright Law Course: Ingrid Bough-Bell, Falle Nelson, Joy Mansfield, Alden Almquist, Richard Strick, Karen Moses

Dispute Resolution: Alden Almquist, Olivia Farrar-Wellman, Taru Spiegel

Diversity: See Attachment 1

Docent Training: Francine Mate, Jane Rinard, Tim Schurter

Ergonomics: Jeff Taylor, Helen Livanios, David Fernandez, Olivia Farrar-Wellman, Edmond Pears, Mary Svrjcek, Max Derrickson

Excel Training:

Basic: Samantha Embrey, Claire Gardiner, Linda Gill, Jim Vassar, Freda Duncan, Carol Pickett, Lillian Fidler, Vera Rich, Angela Tucker, Skip Schultz, Jackie Darden, Jim Hulbert, Otis McClees, Wayne Crist, Rosalyn Jones

Intermediate: Samantha Embrey, Freda Duncan, Jim Hulbert, Claire Gardiner, Wayne Crist, Thomas Bland

Facilitative Leadership Training:

Trainers: Jim Vassar, Roger Nunes, Jane Rinard

One-day Sessions: See Attachment 2

New Employee Orientation: Olivia Farrar-Wellman, Edmond Pears, Jeff Taylor, Helen Livanios

Retirement Seminar: Falle Nelson

Sexual Harassment Awareness Briefing: John Martin, Anne Zirkle

Women's Program Training: Billy Shuttleworth

Wordperfect 7:

Introductory: Jeff Cole, Lillian Fidler

Intermediate: Wayne Crist

DIVERSITY TRAINING FY'98

SEPTEMBER 1997

Charles Bubeck
Wayne Crist
Wilson Latkovic
Otis McClees
James Moore
Samantha Embrey
Jane Rinard
Anne Zirkle

OCTOBER 1997

Doris Berry
Barbara Brooks
William Max Derrickson
Olivia Farrar-Wellman
Edmond Pears
Mary Svrjcek

FACILITATIVE LEADERSHIP TRAINING

OCTOBER 1997 - SEPTEMBER 1998

NOVEMBER 1997

Ingrid Bough-Bell
Helen Livanios

DECEMBER 1997

Bill Briganti
Lillian Fidler
David Hubbard
Falle Nelson
Alice Parrish
Jane Rinard

JANUARY 1998

Carolann Guglielm

FEBRUARY 1998

Dora Edelson
James Holloway
Tsai-Hong Miller

MARCH 1998

Merleen Canty
Ernest Carpenter
Annelies Dobak
Geoff Henderson
Tom Simpson

APRIL 1998

Michele Broussard
Warren Cytron

MAY 1998

Ted Hirakawa
Tom Skallerup

JUNE 1998

Freda Duncan
Francine Mate
Karen Moses

JULY 1998

Mary Jones

AUGUST 1998

Virginia Giroux

SEPTEMBER 1998

Olivia Farrar-Wellman
Anne Zirkle